

Appeal from a decision of the Division of Cadastral Survey, Bureau of Land Management, dismissing a protest against the position of a quarter section corner reestablished during a dependent resurvey. Group No. 346, Wyoming.

Affirmed.

1. Surveys of Public Lands: Dependent Resurveys

Restoration of a lost corner by means of proportionate measurement in accordance with the record of the original survey is the proper procedure in a dependent resurvey where there is a lack of conclusive evidence as to the location of the original survey corner.

2. Surveys of Public Lands: Dependent Resurveys

Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey.

APPEARANCES: James R. Learned, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Paul N. Scherbel has appealed from the letter decision of the Acting Chief, Cadastral Survey Examination and Approval Staff, Bureau of Land Management (BLM), dated November 5, 1980, dismissing his protest against the dependent resurvey of sec. 20, T. 37 N., R. 118 W., sixth principal meridian, Wyoming, executed by BLM in 1973. ^{1/} He specifically protested the location of the 1/4 section corner common to secs. 20 and 29 because he alleges that it results in a wedge-shaped overlap along the boundaries of privately surveyed lands within sec. 20. He asserted that the quarter corner should be recognized as the point which he protracted from a sixteenth section corner positioned by surveyor Russell Stoker in 1955, which protracted point is located 5.25 feet west of the BLM reestablished corner.

The dependent resurvey of sec. 20 was executed by Jerry L. Messick, Supervisory Surveying Technician, from July through October 1973 pursuant to special instructions issued July 5, 1972, for Group No. 346, Wyoming. These instructions directed that the resurvey be accomplished in accordance with the provisions of secs. 387-427 of the Manual of Instructions for the Survey of the Public Lands of the United States (1947) ^{2/} (hereinafter 1947 Manual). BLM received appellant's protest on August 31, 1976. The Chief, Cadastral Survey Examination and Approval Staff, approved the dependent resurvey and accepted the corresponding plat on December 2, 1980.

In dismissing appellant's protest, BLM stated:

In 1955, Russell D. Stoker, Wyoming Professional Engineer and Land Surveyor, License No. 330, subdivided section 20 for the purpose of locating and lotting the Rees Subdivision in the N 1/2 SE 1/4 of said section. In this survey, Mr. Stoker found no evidence of the original 1/4 section corner of sections 20 and 29. The position for this 1/4 section corner was determined by old fence lines. He (Mr. Stoker) then established the NW corner of the Rees Subdivision, which he considered to be true C 1/4 section corner of section 20, ". . . by chaining from two original corners and some old fence lines for directions that were represented to me to be on the original 1/4 section lines and turning an angle from a third original corner." He then established the SE corner of the Rees Subdivision, which is the CS 1/16 section corner of section 20,^[3/] ". . . as best could be from the original corners found

^{1/} The Chief, Division of Cadastral Survey in Washington, D.C., concurred in the decision on November 12, 1980.

^{2/} The Manual of Instructions for the Survey of the Public Lands of the United States was reissued in 1973, in a slightly different format. References to the 1973 version will be cited as 1973 Manual.

^{3/} The correct reference is to the SW corner of the Rees Subdivision.

and the evidence on the ground such as old fence lines. . ." Mr. Stoker did not monument the position for the 1/4 section corner of sections 20 and 29.

During the retracement of the line between sections 20 and 29, Jerry Messick found no evidence of any old fence lines and made the determination that the 1/4 section corner of sections 20 and 29 was lost, and he reestablished the position at proportionate position, based on the perpetuated original section corners of sections 19, 20, 29, and 30, and 20, 21, 28, and 29. Subsequent to the resurvey by the Bureau of Land Management, you retraced the N-S center line in the process of executing a survey in section 20. It can only be concluded that you did not recover any evidence of the old fence lines mentioned by Mr. Stoker, because of the absence of any mention of the fences in your protest, other than relating to Mr. Stoker using the fences for his positioning of corner points in his survey. You then used the C 1/4 and CS 1/16 section corners set by Mr. Stoker to protract the south 1/2 mile of the N-S center line to intersection with the section line between sections 20 and 29, thus, positioning your 1/4 section corner of sections 20 and 29 westerly 5.25 feet from the BLM reestablished 1/4 section corner of sections 20 and 29. It is the understanding of this office that you marked your 1/4 section corner for section 20 only.

You also point out that by using the 1/4 section corner of sections 20 and 29 as reestablished by the BLM, that it will not be on the line protracted from the Rees Subdivision, and in turn creates a wedge-shaped overlap on four lots plus an overlap on a tract along the same line.

For this situation to be true, the N-S centerline of the S 1/2 of section 20 would be on a straight line between Stokers C 1/4 and the proportionate position of the 1/4 section corner of sections 20 and 29, ignoring Stokers CS 1/16 section corner. It is true that in an original subdivision the centerlines are to be straight lines, however, in a resurvey it is not unusual to find the intervening corners to be somewhat off-line creating angle points in the line. In the event that we, the Bureau of Land Management, were to subdivide section 20, all local points of control would be evaluated for acceptance or rejection. The determination to be made is if the local point(s) of control were established in good faith and in a conscientious manner. In section 20 it appears that these have been satisfied and the corners established by Stoker would be within tolerance

for acceptance even though the procedures used by Stoker in establishing these corners were not within the guidelines of the Manual of Instructions for the Survey of Public Lands of the United States, or in accordance with Wyoming survey laws. The results would be that the bearing between the CS 1/16 section corner and the proportionate position of the 1/4 section corner of sections 20 and 29 would differ slightly from the bearing between the C 1/4 section corner and the CS 1/16 section corner, eliminating the wedge shaped overlap. This would have no adverse affect on the Rees Subdivision.

In the absence of the fences and evidence used by Stoker to position the 1/4 section corner of sections 20 and 29, the BLM surveyor had to weigh the less certain collateral evidence against using the proportionate method. In order to protect bona fide rights within both sections 20 and 29, the proportionate position was accepted.

In his statement of reasons, appellant makes the following assertions:

1. That the decision dismissing his protest is erroneous, arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.
2. That the dependent resurvey and the reestablishment of the 1/4 section corner of Sections 20 and 29 were unlawful and exceeded the statutory authority of the Secretary of the Interior.
3. That the dependent resurvey and the reestablishment of the 1/4 section corner of Sections 20 and 29 deprived the Appellant's client of property without due process of law in violation of the Constitution of the United States.

In support of these assertions, appellant contends that the reestablishment of the quarter section corner at issue by the proportionate method violated the 1947 Manual because the corner was treated as a lost corner and not as an obliterated corner. He cites the 1947 Manual as requiring exhaustion of other means of identifying corner positions before a surveyor may restore a lost corner by this method and urges that BLM conducted its resurvey without investigating the records of Teton County or considering the testimony of interested landowners, competent surveyors and other qualified witnesses. He claims that protraction of existing surveys of record for sec. 20 and available testimony would result in identifying the position of the corner as he found it to be. He suggests that BLM ignored

the fact that Stoker's acts in themselves are exactly the kind of evidence contemplated by Section 355 of the Manual of Surveying Instructions - 1947 for the recovery of an obliterated corner "by the acts . . . of competent surveyors" and that the Stoker survey of the Rees subdivision and other private surveys in the area were "record evidence" which the BLM surveyor was required under the Manual to investigate but did not.

Finally, he urges that, contrary to BLM's assertion in its dismissal decision, the reestablishment of the quarter section corner as done in the resurvey impairs existing bona fide rights and confuses existing boundaries based on the original survey.

In response to appellant's statement of reasons, BLM has informed this Board that there was no remaining evidence of the original corner at the quarter section corner of secs. 20 and 29 and no evidence of any private survey that perpetuated the original position. BLM notes that Russell Stoker did not find any evidence of the original quarter section corner at issue and used

existing fence lines to control the positions of the center 1/4 section corner, the center south 1/16 section corner and the 1/4 section corner of sections 20 and 29 along with some combination of chaining to original corners and angles turned from original corners. It would appear that the survey procedures under 43 USC 752 were not followed. Mr. Stoker did not monument his position for the 1/4 section corner * * *. In all probabilities, the fences along this half mile would not be on an "instrument line," but may be "eyeball" straight to the rancher who built the fences. Mr. Scherbel has extended an instrument line from the center 1/4 section corner, over the center south 1/16 section corner and arrived at a point 5 feet distant from our monument. We would fully expect that to happen along the majority of fence lines in Wyoming.

BLM also reports that the area surrounding the quarter section corner has been disturbed by construction machinery and there is no evidence of fence lines remaining as far as the eye can see from the quarter section corner. BLM concludes that the BLM surveyor correctly determined that the corner was lost.

[1] The dependent resurvey is designed to accomplish a restoration of what purports to be the original conditions according to the record, based, first, upon identified existing corners of the original

survey and other recognized and acceptable points of control, and, second, upon the restoration of missing corners by proportionate measurement in harmony with the record of the original survey. This type of resurvey is applicable to those cases showing fairly concordant relation between conditions on the ground and the record of the original survey. Titles, areas, and descriptions should remain absolutely unchanged in the typical dependent resurvey. 1947 Manual; Frank Lujan, 30 IBLA 95 (1977); Alfred Steinhauer, 1 IBLA 167, 171, (1970).

A dependent resurvey consists of a retracement and reestablishment of the lines in the original survey in their true original positions according to the best available evidence of the positions of the original corners. 1973 Manual, § 6-4; Henry O. Woodruff, 24 IBLA 190, 192 (1976); Orion L. Fenton, 1 IBLA 203, 207 (1971); Alfred Steinhauer, *supra*.

A lost or missing corner is a point of a survey whose position cannot be determined, beyond reasonable doubt, either from traces of the original marks or from acceptable evidence that bears upon the original position, and whose location can be restored only by reference to one or more interdependent corners. 1973 Manual, § 5-20. The proportionate measurement method of relocating a lost corner is always employed unless outweighed by conclusive evidence of the original survey. 1973 Manual, § 5-21. Thus, proportionate measurement is the accepted method of reestablishing a survey corner unless outweighed by conclusive evidence of the original survey. Stanley A. Phillips, 31 IBLA 342 (1977); Henry O. Woodruff, *supra*.

Examination of the record does not show that the reestablishment of the quarter section corner for secs. 20 and 29 was in any way at variance from the specifications set out in the 1947 Manual or in the special instructions for this survey. In determining whether to treat a particular corner as a lost corner or obliterated corner the key is evidence arising from the original survey establishing the position of the corner. A corner may only be considered obliterated when there is acceptable collateral evidence by which the original position may be accurately located. 1947 Manual, § 348. BLM found no remaining evidence from the original survey of the quarter section corner at issue. Appellant has not presented any collateral evidence of the original survey to support his challenge to the BLM reestablished position, he merely asserts that BLM did not consider all the evidence.

[2] Surveys of the United States, after acceptance, are presumed to be correct and will not be disturbed except upon clear proof that they are fraudulent or grossly erroneous. An appellant challenging a Government resurvey has the burden of establishing by clear and convincing evidence that the resurvey is not an accurate retracement or reestablishment of the lines of the original survey. Henry O. Woodruff,

supra. We are not persuaded by the arguments of appellant that the reestablished corner was incorrectly positioned.

As pointed out by BLM, the dependent resurvey at issue did not purport to subdivide sec. 20. If that were to occur other means would be employed to protect the bona fide rights of affected property owners. See 1973 Manual, §§ 5-42, 6-12 through 6-18, 6-280.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge.

